

EXHIBIT 1

William C. Kelly, M.D.

Thomas vs. ECFMG, et al.

January 17, 2014

<p style="text-align: right;">Page 1</p> <p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA CIVIL TRIAL DIVISION</p> <p>-----</p> <p>MATHEW THOMAS, JR. : CIVIL ACTION vs. : ECFMG, et al. : NO. 13-3946</p> <p>-----</p> <p style="text-align: center;">Friday, January 17, 2014</p> <p>-----</p> <p>Oral deposition of WILLIAM C. KELLY, M.S., held at NATIONAL BOARD OF MEDICAL EXAMINERS, 3750 Market Street, Philadelphia, Pennsylvania, beginning at approximately 10:00 a.m., on the above date, before LANCE A. BRUSILOW, Registered Professional Reporter, Approved Reporter for the United States District Court, and Notary Public, there being present.</p> <p>-----</p> <p>brusilow + associates 255 South 17th Street Suite 1503 Philadelphia, PA 19103 215.772.1717 www.brusilow.com</p> <p>-----</p>	<p style="text-align: right;">Page 3</p> <p>1 (It is hereby agreed by and among 2 counsel that signing, sealing, certification and 3 filing are waived; and that all objections, except 4 as to the form of the question, are reserved until 5 the time of trial)</p> <p>6 DR. THOMAS: We are gathered today to 7 depose Mr. William Kelly. My name is Dr. Mathew 8 Thomas, Jr. I'm representing myself pro se. If 9 you guys would like introduce yourselves.</p> <p>10 MS. McENROE: I'm Elisa McEnroe, 11 counsel for the Educational Commission for Foreign 12 Medical Graduates, and the witness, Mr. Kelly.</p> <p>13 MS. HOLLAND: I'm Maureen Holland. I'm 14 counsel for the National Board of Medical 15 Examiners.</p> <p>16 MS. WILLIAMS: I'm Suzanne Williams, 17 counsel for the National Board of Medical 18 Examiners.</p> <p>19 DR. THOMAS: So, we'll begin. 20 (EXAMINATION)</p> <p>21 BY DR. THOMAS: 22 Q. Mr. Kelly, welcome. 23 A. Thank you. 24 Q. For the record, please just state your full</p>
<p style="text-align: right;">Page 2</p> <p style="text-align: center;">APPEARANCES</p> <p>SOUTHERN MEDICAL GROUP BY: MATHEW THOMAS, JR., M.D. 326 East 149th Street Bronx, NY 10541 ph: 718.585.6262 (mthomas1@sbhny.org) Counsel for Plaintiff</p> <p>MORGAN, LEWIS & LEWIS, LLP BY: ELISA P. McENROE, ESQUIRE 1701 Market Street Philadelphia, PA 19103-2921 ph: 215.963.5917 (emcenroe@morganlewis.com) Counsel for ECFMG and William C. Kelly, M.S.</p> <p>HAMBURG & GOLDEN, P.C. BY: MAUREEN P. HOLLAND, ESQUIRE 1601 Market Street, Suite 3310 Philadelphia, PA 19103-143 ph: 215.255.8584 (hollandmp@hamburg-golden.com) Counsel for Gerard F. Dillon, M.D., Steven Haist, M.D. and Janet Carson, Esquire</p> <p>NATIONAL BOARD OF MEDICAL EXAMINERS BY: SUZANNE WILLIAMS, ESQUIRE 3750 Market Street Philadelphia, PA 19104-3102 Ph: 215.590.9538 (swilliams@nbme.org) Counsel for NBME</p>	<p style="text-align: right;">Page 4</p> <p>1 name. 2 A. William Kelly. 3 Q. And your position? 4 A. I'm associate vice-president for operations at 5 the Educational Commission for Foreign Medical 6 Graduates. 7 Q. Will you please explain a little bit about 8 what your role is at ECFMG under that title? 9 A. It might be helpful to explain a little bit 10 about what ECFMG does first. 11 ECFMG is a non-profit organization that 12 protects the health of the public by certifying 13 international medical graduates as being eligible to 14 enter graduate medical-education programs in the United 15 States and participating internationally in programs 16 that assess and evaluate international medical 17 graduates. 18 And at ECFMG, as associate vice-president for 19 operations, I oversee the areas that register 20 international medical students and graduates for those 21 USMLE examinations required for ECFMG certification, 22 including Step 1 and both components of Step 2 -- Step 23 2 CK and Step 2 CS -- assessing that they are eligible 24 for those examinations and certifying each is</p>

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<p>1 ECFMG-certified to those physicians who meet the ECFMG 2 requirements. 3 I also oversee the areas of ECFMG that take 4 care of all the applicant records, electronic and hard 5 copy; our interim credentials programs; and staff the 6 ECFMG credentials committee that reviews requests for 7 exceptions to policy and allegations of an irregular 8 behavior. 9 Q. Could you tell me a little bit about your 10 educational training that makes you able to work in 11 that position? 12 A. Okay. My educational background: I have a 13 Bachelors of Arts Degree in English Literature and a 14 Masters Degree in Organizational Dynamics. I also have 15 extensive experience at ECFMG; I've worked there over 16 thirty-six years. 17 Q. What other roles did you play before you got 18 to your current role at ECFMG? 19 A. My prior positions at ECFMG? 20 Q. Yes. 21 A. I was the director of the credentials 22 department. Prior to that I was the manager of the 23 information services department, and I started off 24 there thirty-six years ago as a customer service rep.</p>	<p>1 Foundation for Advancement of International Medical 2 Education & Research -- it's an ECFMG foundation -- and 3 if the medical school's listed in that directory, 4 that's one of eligibility requirements for ECFMG 5 certification. 6 Q. Is it safe to say that only those who fall 7 under those guidelines, are certified under a school 8 under that foundation, are allowed to sit for the exam 9 by way of ECFMG? 10 MS. McENROE: Objection, vague. 11 A. But I'll try to answer that. One of the 12 eligibility requirements to sit for USMLE Step 1 and 13 Step 2, if you're an international medical student or 14 graduate, is that you be currently enrolled or have 15 graduated in a medical school listed in the directory I 16 just mentioned, the International Medical Education 17 Directory. 18 Q. Let me rephrase just a little bit: Is it safe 19 to say that an applicant such as Mathew Thomas, in 20 order for him to be certified by ECFMG to sit for USMLE 21 Step 1, Step 2 CS/CK, the school he went to was under 22 that. . . 23 A. This is one of the eligibility requirements. 24 Q. Is that a mandatory requirement, at minimum,</p>
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<p>1 Q. In terms of your role at ECFMG, do you have 2 any direct role with NBME? 3 MS. McENROE: Objection, vague. You 4 can answer. 5 THE WITNESS: I deal with NBME in 6 certain cases. 7 BY DR. THOMAS: 8 Q. So, you have a relationship with NBME? 9 A. The organization ECFMG does, yes. 10 Q. Do you have any relationship to the exam 11 itself, USMLE? 12 A. As I said before, ECFMG serves as the 13 registration entity for international medical students 14 and graduates applying for Step 1 and Step 2. 15 Q. Do you have any relationship to the questions 16 that are put on USMLE? 17 A. No. 18 Q. When you talk about certifying graduates, do 19 you have any role in certifying the medical schools 20 they go to? 21 A. Okay. The eligibility for ECFMG 22 certification, certifying the international medical 23 graduates, we require that the medical school be listed 24 in a directory maintained by an organization called the</p>	<p>1 that requirement of the school being listed? 2 A. That is one of eligibility requirements, yes. 3 Q. Are you familiar with the case against Optima 4 University? 5 A. Yes, I have some knowledge of that. Yes. 6 Q. Did you work directly with any investigation 7 regarding the case against Optima University? 8 MS. McENROE: Objection to the extent 9 it calls for privileged information. So, if you 10 discussed anything or heard anything from lawyers, 11 you should not respond on that basis. 12 THE WITNESS: I'm a little confused, 13 though. Could you repeat your question again? 14 BY DR. THOMAS: 15 Q. My question is, were you involved with the 16 investigation against Optima University? 17 A. Not directly, no. 18 Q. Were you ever questioned by any authorities 19 investigating the Optima University case? 20 A. What authorities are you referring to? 21 Q. They could be public law enforcement. 22 A. Yes. 23 Q. You were. 24 A. Yes.</p>

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<p>1 Q. Can you elaborate anything on the questioning</p> <p>2 in terms of what was the line of questioning?</p> <p>3 A. My recollection may not be the best, but it</p> <p>4 was with respect to a grand jury investigation in</p> <p>5 northern New Jersey.</p> <p>6 Q. And could you tell me who the investigative</p> <p>7 party was?</p> <p>8 MS. McENROE: Objection to the</p> <p>9 extent -- I don't know if you feel that any of</p> <p>10 that was done under confidentiality entities who</p> <p>11 may have been doing the investigating. I just</p> <p>12 want to caution you. If you would like to speak</p> <p>13 off the record, we can briefly.</p> <p>14 THE WITNESS: I'd like to speak off the</p> <p>15 record.</p> <p>16 DR. THOMAS: Sure.</p> <p>17 (There was a discussion held off the</p> <p>18 record)</p> <p>19 DR. THOMAS: We're back on the record.</p> <p>20 BY DR. THOMAS:</p> <p>21 Q. So again, Mr. Kelly, the question was if you</p> <p>22 could identify who the investigating party was.</p> <p>23 A. Yes, and my understanding is that the</p> <p>24 investigation is still ongoing, so I don't feel</p>	<p>1 Q. And what was the outcome that you were told?</p> <p>2 A. My recollection is that the particular score</p> <p>3 in question was rendered indeterminate.</p> <p>4 Q. Are you knowledgeable to the processes</p> <p>5 following any validation hearing in terms of appeals?</p> <p>6 MS. McENROE: Objection as to form. Are</p> <p>7 you asking with respect to USMLE appeals?</p> <p>8 DR. THOMAS: Yes.</p> <p>9 BY DR. THOMAS:</p> <p>10 Q. If a student were to go before a hearing and</p> <p>11 be found indeterminate, are you aware of policies and</p> <p>12 procedures that are available to the student to appeal</p> <p>13 that decision?</p> <p>14 A. Yes.</p> <p>15 Q. Does ECFMG play any role within that</p> <p>16 decision-making or the appeal process?</p> <p>17 A. Can you clarify what you mean by "role"?</p> <p>18 Q. Do they have a say in what any appeal</p> <p>19 process -- let me rephrase. Strike that.</p> <p>20 If the student takes an appeal process and</p> <p>21 there is a next committee, a composite committee, is</p> <p>22 ECFMG a member or part of that committee?</p> <p>23 A. Well, the process is determined by the USMLE</p> <p>24 program, but you're talking about membership on which</p>
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<p>1 comfortable answering that.</p> <p>2 Q. Are you aware that there was a verdict against</p> <p>3 Optima University in an ongoing investigation?</p> <p>4 MS. McENROE: Objection to the extent</p> <p>5 it calls for a legal conclusion.</p> <p>6 THE WITNESS: I know there was a court</p> <p>7 order related to Optima University, yes.</p> <p>8 BY DR. THOMAS:</p> <p>9 Q. Are you aware of any decision made in that</p> <p>10 court case against Optima University?</p> <p>11 A. I have no direct --</p> <p>12 MS. McENROE: Objection, calls for a</p> <p>13 legal conclusion.</p> <p>14 THE WITNESS: And I have no knowledge.</p> <p>15 DR. THOMAS: Okay.</p> <p>16 BY DR. THOMAS:</p> <p>17 Q. Were you present at the hearing held by the</p> <p>18 committee for validating scores for Mathew Thomas, Jr.?</p> <p>19 A. No.</p> <p>20 Q. Were you made aware of any decisions made</p> <p>21 within that hearing or that committee regarding his</p> <p>22 exam taken on December 31, 2007?</p> <p>23 A. ECFMG was notified of the outcome of the</p> <p>24 committee's review, yes.</p>	<p>1 committee?</p> <p>2 Q. On the appeals committee, the second</p> <p>3 committee, which would be the composite.</p> <p>4 A. Under the terms of the USMLE program, ECFMG,</p> <p>5 as an entity, does have representation on the USMLE</p> <p>6 composite committee, yes.</p> <p>7 Q. And that composite committee, is it based on a</p> <p>8 vote to make a decision, or is it just a discussion and</p> <p>9 a certain person makes the decision?</p> <p>10 A. My understanding of the process is that an</p> <p>11 appeal goes to the full composite committee, which</p> <p>12 votes on whether or not to grant the appeal.</p> <p>13 Q. Did ECFMG have a vote on the appeal of Mathew</p> <p>14 Thomas, Jr.?</p> <p>15 A. Well, to the extent that ECFMG -- I don't know</p> <p>16 who participated in the particular composite committee</p> <p>17 that reviewed the appeal. I suggest the individuals at</p> <p>18 the USMLE program probably would have that knowledge.</p> <p>19 Q. So, you're not aware of any stance that ECFMG</p> <p>20 took in that appeal process.</p> <p>21 MS. McENROE: Objection to form.</p> <p>22 THE WITNESS: It wouldn't be ECFMG. It</p> <p>23 would be. . .</p> <p>24</p>

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<p>1 BY DR. THOMAS:</p> <p>2 Q. A member representing ECFMG.</p> <p>3 A. And I don't know that they necessarily</p> <p>4 represent ECFMG, necessarily. I think, as members of</p> <p>5 the composite committee, their duty is to the USMLE</p> <p>6 program. I think we just appoint.</p> <p>7 Q. I understand. In terms of the investigation</p> <p>8 against Optima University, did you yourself interview</p> <p>9 any students who may have been alleged to be a member</p> <p>10 or a student at Optima University?</p> <p>11 A. No, I did not.</p> <p>12 Q. Were you ever contacted by any students who</p> <p>13 went to Optima University?</p> <p>14 A. With respect to what? For example, I deal with</p> <p>15 applicants to ECFMG all the time and have for many</p> <p>16 years, so it's quite possible I may have spoken, as I</p> <p>17 do with all students, to someone who went to Optima</p> <p>18 University.</p> <p>19 Q. Are you familiar with the web page Oasis?</p> <p>20 A. Oasis is ECFMG's online applicant-information</p> <p>21 system. Yes, I am.</p> <p>22 Q. And when the Optima University investigation</p> <p>23 went on, could you tell me what happened to a</p> <p>24 student's -- an alleged student's account if they were</p>	<p>1 A. So, could you ask the question again?</p> <p>2 Q. What steps would have had to have happened for</p> <p>3 ECFMG to flag a student's account on Oasis?</p> <p>4 MS. McENROE: Objection to form. You</p> <p>5 may answer.</p> <p>6 THE WITNESS: We would receive</p> <p>7 notification from the national board that they</p> <p>8 were investigating the individual and request us</p> <p>9 to flag their record.</p> <p>10 BY DR. THOMAS:</p> <p>11 Q. And when you say "national board," you're</p> <p>12 referring to NBME?</p> <p>13 A. Yes.</p> <p>14 Q. So, without NBME notifying you, would you have</p> <p>15 flagged any students?</p> <p>16 MS. McENROE: Objection to form.</p> <p>17 A. With respect to the Optima investigation, no.</p> <p>18 Q. And what would be the process to unflag or to</p> <p>19 remove the flag from an Oasis account for a student who</p> <p>20 went to Optima University?</p> <p>21 MS. McENROE: Objection to form.</p> <p>22 A. Notification from the national board that its</p> <p>23 investigation had been completed.</p> <p>24 Q. So, to clarify, the NBME must tell you to flag</p>
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<p>1 found to be a student at Optima University?</p> <p>2 MS. McENROE: Objection to form.</p> <p>3 THE WITNESS: I can still answer it, if</p> <p>4 I can?</p> <p>5 MS. McENROE: Yes.</p> <p>6 THE WITNESS: If ECFMG were alerted by</p> <p>7 the USMLE program that they had information that</p> <p>8 an individual may have been a student at Optima</p> <p>9 University, ECFMG would flag their record.</p> <p>10 BY DR. THOMAS:</p> <p>11 Q. Could you explain what flagging a record</p> <p>12 means?</p> <p>13 A. Flagging, at least with respect to ECFMG,</p> <p>14 means that no automated process could take place</p> <p>15 without a staff member knowing about it.</p> <p>16 Q. So, in order for a student to get flagged,</p> <p>17 what exactly would have to be done? And let me just</p> <p>18 clarify the question: How would you make the decision</p> <p>19 to flag said student?</p> <p>20 MS. McENROE: Objection to the form.</p> <p>21 A. And you're still talking about with respect to</p> <p>22 the Optima University? Because we flag all the records</p> <p>23 from myriad universities.</p> <p>24 Q. Just for the Optima University question.</p>	<p>1 and the NBME must tell you to unflag in respect to the</p> <p>2 Optima University case.</p> <p>3 MS. McENROE: Objection to form.</p> <p>4 A. With respect to the unflagging, I can't say</p> <p>5 specifically the national board would say you should</p> <p>6 now unflag, that they would notify us of the final</p> <p>7 outcome of the case. We would then, on our own, unflag</p> <p>8 the record.</p> <p>9 Q. If a case is found indeterminate and the</p> <p>10 student is offered a validation exam, at what point</p> <p>11 would they be unflagged?</p> <p>12 MS. McENROE: Objection to form.</p> <p>13 A. I think at that point they would still remain</p> <p>14 flagged.</p> <p>15 Q. If a student fails a validation exam, would</p> <p>16 the account remain flagged?</p> <p>17 MS. McENROE: Objection to form.</p> <p>18 A. Maybe eventually, but maybe not, not at that</p> <p>19 exact moment. You would have to be certain that the</p> <p>20 process was over.</p> <p>21 Q. So, you would still need NBME -- would you</p> <p>22 need NBME to notify you?</p> <p>23 A. Not necessarily.</p> <p>24 Q. So, if you could just explain, then. A person</p>

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<p>1 takes a validation exam and fails. What would be the 2 steps for you to know to unflag that student?</p> <p>3 MS. McENROE: Objection to form.</p> <p>4 A. Obviously we would need to be notified by the 5 national board that the individual had taken the 6 validating exam, the examination failed, and ECFMG 7 would then kind of look at its own processing systems.</p> <p>8 For example, if it had an impact on 9 certification, ECFMG certification, etcetera, etcetera, 10 we would need to take care of all of that before we 11 would unflag the record.</p> <p>12 Q. Is there anything you can do on Oasis besides 13 register for an exam, meaning is there any other 14 information pertinent to the student to take a look at?</p> <p>15 A. Yes, there are a number of things.</p> <p>16 Q. Can you explain some of those?</p> <p>17 A. As I said before, it's the online 18 applicant-information system and individuals can -- 19 it's password-protected, so the individual has to 20 provide their USMLE number and their self-selected 21 password.</p> <p>22 They can change their contact information: 23 For example, their address, email address, telephone 24 number. They can make payments for any of our</p>	<p>1 Q. So, based on what you've told me, should that 2 account now be unflagged?</p> <p>3 MS. McENROE: Objection to form.</p> <p>4 A. That's a possibility, yes.</p> <p>5 Q. Does ECFMG send out a bulletin to all medical 6 graduates via email or on their sites?</p> <p>7 MS. McENROE: Objection to form.</p> <p>8 A. Could you clarify what you. . .</p> <p>9 Q. Does ECFMG have any kind of newsletter or 10 announcement email that goes out to students or medical 11 graduates?</p> <p>12 A. We have a number of different communication 13 means, including an information booklet. We do put 14 announcements on the website. We have e-newsletters, 15 yes.</p> <p>16 Q. Did ECFMG ever post or send out any 17 information regarding the Optima University 18 investigation?</p> <p>19 MS. McENROE: Objection to form.</p> <p>20 A. I don't recall.</p> <p>21 Q. When did you first become aware of the Optima 22 University investigation?</p> <p>23 A. I don't recall the exact date, no.</p> <p>24 Q. Could you tell me what year you were notified?</p>
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<p>1 services. They can submit applications for examination, 2 request extensions of eligibility periods, see when 3 exam scores are released, access exam scores, see when 4 their ECFMG certificate was issued. Those are some of 5 the things that come to mind.</p> <p>6 Q. Do you need Oasis, in any form, as part of the 7 ERAS application, ERAS being the residency application?</p> <p>8 MS. McENROE: Objection to form.</p> <p>9 A. Frankly, I don't know.</p> <p>10 Q. Do you know if the Oasis account of Mathew 11 Thomas, Jr. is currently flagged or unflagged?</p> <p>12 A. Yes, I do.</p> <p>13 Q. Is it flagged?</p> <p>14 A. Yes.</p> <p>15 Q. Do you know if Mathew Thomas passed the 16 validation exam?</p> <p>17 A. Are you referring to the validating 18 examination for the Step 2 CK that was rendered 19 indeterminate?</p> <p>20 Q. Yes, the Step 2 validation exam that was taken 21 in September 2011.</p> <p>22 A. I believe that our records show that we were 23 notified by the national board that that examination 24 was not passed.</p>	<p>1 A. I'm not necessarily wonderful with dates, but 2 I believe maybe 2007, something like that, 2008.</p> <p>3 Q. Would it be early 2007 or late 2007?</p> <p>4 A. I don't recall.</p> <p>5 Q. Can you tell me how you found out about the 6 Optima University investigation?</p> <p>7 MS. McENROE: Objection to the extent 8 that it calls for confidential information that we 9 discussed earlier.</p> <p>10 THE WITNESS: And I actually don't 11 recall.</p> <p>12 BY DR. THOMAS:</p> <p>13 Q. Could you say if it was through students or 14 non-students -- well, to rephrase: Applicants, ECFMG 15 medical school applicants that told you about Optima 16 University or any pending investigation.</p> <p>17 MS. McENROE: Objection to form.</p> <p>18 A. I don't recall that, no.</p> <p>19 Q. Do you remember having any communications with 20 Mathew Thomas, Jr.?</p> <p>21 A. I do not.</p> <p>22 Q. Do you remember any emails with Mathew Thomas, 23 Jr.?</p> <p>24 A. To me directly or to ECFMG?</p>

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<p>1 Q. To you directly.</p> <p>2 A. I believe I did, yes.</p> <p>3 Q. Who is Kara Corrado?</p> <p>4 A. Kara Corrado is an ECFMG employee.</p> <p>5 Q. Does she report to you?</p> <p>6 A. Yes.</p> <p>7 Q. Did she ever at any time tell you about any</p> <p>8 discussions or emails with Mathew Thomas or regarding</p> <p>9 Mathew Thomas', I guess, case with respect to his USMLE</p> <p>10 Step 2 CK exam?</p> <p>11 A. I don't recall having any discussions with her</p> <p>12 concerning that.</p> <p>13 Q. Did you have any discussions with Kara</p> <p>14 regarding Mathew Thomas' questions regarding a</p> <p>15 seven-year waiver or a sixth-attempt waiver?</p> <p>16 A. With respect to a potential request for an</p> <p>17 exception to the ECFMG requirement that applicants for</p> <p>18 certification pass all the exams required for</p> <p>19 certification within seven years, with respect to that,</p> <p>20 yes, I do recall conversations with Kara Corrado.</p> <p>21 Q. Could you explain that seven-year rule?</p> <p>22 A. Yes. For purposes of ECFMG certification, an</p> <p>23 international medical student or graduate must pass all</p> <p>24 of the examinations that meet certification</p>	<p>1 they able to log into the site?</p> <p>2 A. Yes.</p> <p>3 Q. If they log into the site, does a message</p> <p>4 appear?</p> <p>5 MS. McENROE: Objection to form.</p> <p>6 A. I have no knowledge of any message that</p> <p>7 appears.</p> <p>8 Q. So, if a student is flagged --</p> <p>9 A. Can I say something -- go ahead. When you say</p> <p>10 if they were flagged. . .</p> <p>11 Q. Is if a student is flagged for a step exam, in</p> <p>12 this case Step 2 CK, your understanding is that that</p> <p>13 student can go into Oasis and register for the exam?</p> <p>14 MS. McENROE: Objection to form.</p> <p>15 A. Okay. My understanding is that they can apply</p> <p>16 for the examination. It takes an active act on the</p> <p>17 part of an ECFMG staff member to determine whether the</p> <p>18 individual is eligible to be registered.</p> <p>19 So, to clarify, the individual can apply</p> <p>20 through Oasis; they cannot register.</p> <p>21 Q. Do you have knowledge of who manages the Oasis</p> <p>22 site?</p> <p>23 MS. McENROE: Objection to form.</p> <p>24 A. It's a software. It's an IT software. I</p>
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<p>1 requirements within a seven-year period.</p> <p>2 So, for example, currently the exams required</p> <p>3 for ECFMG certification, that are administered that</p> <p>4 meet ECFMG-certification requirements, are USMLE Step</p> <p>5 1, USMLE Step 2 CK, and USMLE Step 2 CS.</p> <p>6 Once an individual passes any one of those</p> <p>7 examinations, that individual then has seven years from</p> <p>8 that date to pass the other two exams, or the earlier</p> <p>9 passing performance becomes void for ECFMG</p> <p>10 certification.</p> <p>11 Q. If an individual goes past that seven years</p> <p>12 and that initial test is voided, what is the next step</p> <p>13 for them or what must they do to become ECFMG</p> <p>14 certified?</p> <p>15 A. With respect to examinations, they must retake</p> <p>16 that examination, if they meet all eligibility</p> <p>17 requirements for that exam.</p> <p>18 Q. With respect to Oasis, if you are flagged, are</p> <p>19 you able to register for any of the step exams?</p> <p>20 MS. McENROE: Objection to form.</p> <p>21 A. One can apply for the examinations, and</p> <p>22 assuming the individual is otherwise eligible, yes,</p> <p>23 they can register for examinations.</p> <p>24 Q. When a student's Oasis account is flagged, are</p>	<p>1 don't know that it's necessarily managed by any one</p> <p>2 individual, if that's what you're trying to get at.</p> <p>3 Q. Let me rephrase: If the site were to go down,</p> <p>4 who would be responsible for it?</p> <p>5 MS. McENROE: Objection to form.</p> <p>6 A. We would contact our IT.</p> <p>7 Q. If changes were to be made to the site, who</p> <p>8 would make that change?</p> <p>9 MS. McENROE: Objection to form.</p> <p>10 A. That would frankly depend on what the changes</p> <p>11 are.</p> <p>12 Q. If a student is undergoing a pending case</p> <p>13 regarding their step exam, whether it be irregular</p> <p>14 behavior or score validation, would that student be</p> <p>15 eligible to sit for an exam?</p> <p>16 MS. McENROE: Objection to form.</p> <p>17 A. Generally, if there is a pending allegation of</p> <p>18 irregular behavior, ECFMG would hold any services from</p> <p>19 that individual, including exam registration.</p> <p>20 Q. In the case of Mathew Thomas, when would that</p> <p>21 restriction have started?</p> <p>22 MS. McENROE: Objection to form.</p> <p>23 A. And could you clarify what you mean by</p> <p>24 "restriction"?</p>

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<p>1 Q. When they were flagged, when Mathew Thomas'</p> <p>2 Oasis account was flagged, when would that have</p> <p>3 started?</p> <p>4 A. When would what have started?</p> <p>5 Q. The flag have been activated.</p> <p>6 A. My recollection is that the flag was put on</p> <p>7 Dr. Thomas' account when we were notified by the</p> <p>8 national board that he was being investigated with</p> <p>9 respect to Optima.</p> <p>10 Q. Would you know what date that was?</p> <p>11 A. I don't recall it.</p> <p>12 Q. You stated earlier that I believe -- or can</p> <p>13 you reiterate again that Mathew Thomas' account is</p> <p>14 still flagged today?</p> <p>15 MS. McENROE: Objection to form.</p> <p>16 A. I think it is, though, yes.</p> <p>17 Q. Did Mathew Thomas file for a waiver of the</p> <p>18 seven-year rule?</p> <p>19 A. We received a request from Dr. Thomas for an</p> <p>20 exception to the ECFMG seven-year requirement, yes.</p> <p>21 Q. Could you please tell me the process once such</p> <p>22 request is received?</p> <p>23 MS. McENROE: Objection.</p> <p>24 A. Requests for exception to ECFMG requirements</p>	<p>1 ECFMG.</p> <p>2 Q. You stated that the members are the board of</p> <p>3 trustees?</p> <p>4 A. Members of the credentials committee are also</p> <p>5 members of the ECFMG board of trustees.</p> <p>6 Q. Are there any other members outside of the</p> <p>7 boards of trustees?</p> <p>8 A. On the committee?</p> <p>9 Q. On that committee.</p> <p>10 A. No.</p> <p>11 Q. How many members are on that committee?</p> <p>12 A. At the time your case was reviewed or</p> <p>13 currently?</p> <p>14 Q. At the time the case was reviewed.</p> <p>15 A. I believe eleven.</p> <p>16 Q. Were you present for that committee?</p> <p>17 A. That particular committee meeting?</p> <p>18 Q. Yes.</p> <p>19 A. Yes.</p> <p>20 Q. Are you a member of that committee?</p> <p>21 A. No.</p> <p>22 Q. Was there anyone present at the meeting beside</p> <p>23 the board of trustees that are members of this</p> <p>24 committee?</p>
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<p>1 for ECFMG certification, for example, can be reviewed</p> <p>2 by the ECFMG medical education credentials committee.</p> <p>3 So, the request was put on the agenda for the committee</p> <p>4 to review.</p> <p>5 Q. Could you please state who the members of that</p> <p>6 committee would be?</p> <p>7 A. The ECFMG Medical Education Credentials</p> <p>8 Committee is a standing committee of the ECFMG board of</p> <p>9 trustees, and it's made up of representatives of the</p> <p>10 ECFMG board.</p> <p>11 Q. Could you tell me the name of the individual</p> <p>12 heading that committee?</p> <p>13 A. At the time the chair of the committee would</p> <p>14 change over time, so --</p> <p>15 Q. For the committee that was specific to the</p> <p>16 waiver requested by Mathew Thomas, who would be the</p> <p>17 chair of that committee?</p> <p>18 A. That was -- my recollection is that that was</p> <p>19 reviewed at the April 2013 meeting of the credentials</p> <p>20 committee, and the chair at that time would have been</p> <p>21 Cynthia Haines.</p> <p>22 Q. Are there any members of that committee that</p> <p>23 do not work for ECFMG?</p> <p>24 A. None of the members of the committee work for</p>	<p>1 MS. McENROE: Objection to form.</p> <p>2 A. Yes, I'm not sure I understand the question.</p> <p>3 Q. The committee to review and make a judgment on</p> <p>4 Dr. Thomas' waiver request met. They are the members</p> <p>5 of the committee.</p> <p>6 Was there anyone else present when that</p> <p>7 request was reviewed in that committee?</p> <p>8 A. There are members of the ECFMG staff who were</p> <p>9 present, and I believe also outside legal counsel.</p> <p>10 Q. So, outside of outside legal counsel and ECFMG</p> <p>11 employees, was there anyone else present for that</p> <p>12 meeting?</p> <p>13 A. I believe not.</p> <p>14 Q. Was NBME present for that meeting?</p> <p>15 A. No, they were not.</p> <p>16 Q. Was a reason for the final decision on that</p> <p>17 waiver request discussed at that committee?</p> <p>18 MS. McENROE: Objection to form.</p> <p>19 A. The committee did discuss the request, yes.</p> <p>20 Q. Was a vote taken?</p> <p>21 A. Yes.</p> <p>22 Q. Do you know what the final vote was?</p> <p>23 A. The vote was not to grant the request.</p> <p>24 Q. Is it a numerical vote?</p>

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<p>1 A. Each member of the committee would vote yes or 2 no. 3 Q. Do you remember what the final vote was? 4 A. I do not, no. 5 Q. Has such a waiver for an exception to the 6 seven-year rule been brought forward to ECFMG, to your 7 knowledge? 8 MS. McENROE: Objection to form. 9 A. Well, your request for a waiver was brought 10 before the committee. 11 Q. Besides Mathew Thomas' request, has anyone 12 else ever requested an exception to the seven-year 13 rule? 14 A. I believe they have, yes. 15 Q. Has anyone ever been granted a waiver to the 16 seven-year rule? 17 A. To my knowledge, no. 18 Q. Are there any policies that would allow for an 19 exception to the seven-year rule? 20 MS. McENROE: Objection to form. 21 A. As I indicated before, the ECFMG credentials 22 committee is authorized, under ECFMG bylaws, to grant 23 exceptions to ECFMG certification requirements to 24 individuals.</p>	<p>1 takes on an exam factor into the seven-year rule? 2 MS. McENROE: Objection to form. 3 A. No, it does not. 4 Q. Is it safe to say that a student who cannot 5 apply to a USMLE staff because their account is flagged 6 pending an investigation, that that would withhold them 7 from completing the three exams within seven years? 8 MS. McENROE: Objection to form. 9 A. Could you restate the question? 10 Q. A student must take the exams within seven 11 years, all three: Step 1, Step 2 CK, Step 2 CS. 12 A. Must pass all three, yes. 13 Q. Must pass all three. Any objection to them 14 being able to apply for the exam and sit for the exam, 15 would that extend the amount of time that they would 16 take and therefore not allow seven years? 17 MS. McENROE: Objection to form. 18 DR. THOMAS: Maybe I could strike that. 19 Let me rephrase that. 20 BY DR. THOMAS: 21 Q. The student must take three exams in seven 22 years and pass all three. 23 A. Yes. 24 Q. If they are not allowed to apply for the exam</p>
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<p>1 Q. My question is, is there any outline in the 2 policies of ECFMG that would allow for that waiver to 3 be granted? 4 MS. McENROE: Objection to form. 5 A. Yes, I'm not sure I understand what you mean. 6 Q. Are there certain criteria that must be met 7 for the waiver to be granted? 8 MS. McENROE: Objection to form. 9 A. In the ECFMG policies and procedures of the 10 credentials there are paragraphs or statements 11 concerning exceptions to policy. I don't know that I 12 recall everything immediately. 13 However, I believe there may be a statement to 14 the effect that it's the burden of the individual to, 15 you know, make the request. 16 Q. At that committee, could you tell me what was 17 given as a background for the person requesting the 18 waiver? 19 MS. McENROE: Objection to form. 20 A. There was what we call agenda materials, and 21 without them in front of me I don't recall what they 22 were, but there would be written materials that were 23 provided to the committee. 24 Q. Does the amount of attempts that a student</p>	<p>1 or they are not allowed to sit for the exam because of 2 a pending investigation and it takes longer than seven 3 years or takes them out of that seven-year window, 4 would that prohibit them from getting all three exams 5 in seven years? 6 MS. McENROE: Objection to the form. 7 A. It could, I would think. 8 Q. Are you aware of the new six-year rule? 9 MS. McENROE: Objection to form. 10 A. A six-year rule? 11 Q. Are you aware of the NBME or the USMLE rule 12 that states that -- I'm sorry, six-attempt rule, that a 13 student can only take the exam six times? 14 A. Yes, I know what that is, yes. 15 Q. Can you please explain in your words how that 16 works? 17 A. Sure. An examinee is permitted a maximum of 18 six attempts on any of the USMLE steps in order to 19 pass. They can take that no more than six times. 20 Q. When did that rule go into effect? 21 A. January 1, 2012. 22 Q. Whose rule is that? 23 A. That's a USMLE rule. 24 Q. Do you know students who passed the USMLE</p>

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<p>1 steps after six attempts?</p> <p>2 MS. McENROE: Objection to form.</p> <p>3 A. Obviously there were cases before the rule</p> <p>4 went into effect, I believe, where an individual passed</p> <p>5 after more than six attempts, yes.</p> <p>6 Q. And do you know of any students who became</p> <p>7 ECFMG certified with more than six attempts on any of</p> <p>8 their exams?</p> <p>9 A. I know of no specific individual. I cannot</p> <p>10 name a specific individual.</p> <p>11 Q. Was Mathew Thomas ECFMG certified before the</p> <p>12 investigation was created?</p> <p>13 MS. McENROE: Objection to form.</p> <p>14 A. I don't recall the date you were certified or</p> <p>15 he was certified.</p> <p>16 Q. Was Mathew Thomas ever certified by ECFMG?</p> <p>17 A. Yes, he was.</p> <p>18 Q. How many attempts did he take on Step 1?</p> <p>19 A. I don't recall.</p> <p>20 Q. Students who had already taken more than six</p> <p>21 attempts, how did that rule affect them on future exams</p> <p>22 or...</p> <p>23 MS. McENROE: Objection to the form.</p> <p>24 A. The six-attempt rule -- I said before it went</p>	<p>1 exceeded the six-attempt limit on Step 1, so he was not</p> <p>2 eligible to take that.</p> <p>3 Q. Would it have been taken into consideration</p> <p>4 that the attempts were before the rule came into</p> <p>5 effect?</p> <p>6 MS. McENROE: Objection to form.</p> <p>7 THE WITNESS: I believe that has no</p> <p>8 bearing on the USMLE rule when those were taken.</p> <p>9 As I said before, the six-attempt limit</p> <p>10 went into effect January 1, 2012, but for those</p> <p>11 who had a prior exam history, they went into</p> <p>12 effect January 1, 2013.</p> <p>13 So, if you're talking February 14th,</p> <p>14 2013, that score would have been eligible to have</p> <p>15 been voided by that date.</p> <p>16 Dr. Thomas -- the six-attempt rule was</p> <p>17 in effect then for someone who had a prior exam</p> <p>18 history, so it would have included Dr. Thomas,</p> <p>19 yes.</p> <p>20 BY DR. THOMAS:</p> <p>21 Q. If the seven-year rule request was granted,</p> <p>22 would that Step 1 score have been expired?</p> <p>23 MS. McENROE: Objection to form.</p> <p>24 A. Could you clarify what you mean by the request</p>
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<p>1 into effect January 1, 2012, but for individuals who</p> <p>2 had already taken USMLE steps, that six-attempt rule, I</p> <p>3 believe, went into effect January 1, 2013.</p> <p>4 Q. Mathew Thomas passed his Step 1 exam in 2006</p> <p>5 and he passed it on the seventh attempt. What would</p> <p>6 have happened to that exam come February 14th, 2013?</p> <p>7 MS. McENROE: Objection to form.</p> <p>8 A. What would have or what...</p> <p>9 Q. What would have?</p> <p>10 A. As I said before, with respect to the</p> <p>11 seven-year requirement for ECFMG certification, if the</p> <p>12 individual did not have a passing score on Step 1 -- I</p> <p>13 mean Step 2 CK and Step 2 CS, that Step 1 score would</p> <p>14 have become voided for purposes of ECFMG certification.</p> <p>15 Q. And would he have been allowed to retake Step</p> <p>16 1 because it expired?</p> <p>17 MS. McENROE: Objection to form.</p> <p>18 A. If you, again, are talking specifically about</p> <p>19 Mathew Thomas...</p> <p>20 Q. Yes.</p> <p>21 A. ...he would not have met eligibility</p> <p>22 requirements to retake Step 1.</p> <p>23 Q. And could you explain why that would be?</p> <p>24 A. My recollection of the record is that he had</p>	<p>1 for the seven-year rule?</p> <p>2 Q. So, the request for the waiver for the</p> <p>3 seven-year rule, which Dr. Thomas asked for an</p> <p>4 extension to toll the time because of the investigation</p> <p>5 process that was being held, had that extension been</p> <p>6 granted, would the Step 1 score have expired?</p> <p>7 MS. McENROE: Objection to form.</p> <p>8 A. Okay. And I'll answer kind of clarifying:</p> <p>9 You're referring to the request that the seven-year</p> <p>10 maximum amount of time to pass the exams required in</p> <p>11 order for the ECFMG certification to be extended.</p> <p>12 Q. Be extended.</p> <p>13 A. And the answer to that is, depending upon --</p> <p>14 if that had been extended, depending upon how long it</p> <p>15 was extended, it is possible that that score, for</p> <p>16 purposes of ECFMG certification, could be valid.</p> <p>17 Q. So, just to clarify: If ECFMG's committee had</p> <p>18 granted the request for the waiver to the seven-year</p> <p>19 rule by granting an extension that went past that</p> <p>20 February 14th, 2013 date, which would have been the</p> <p>21 seven-year mark, is it safe to say that the Step 1</p> <p>22 would not have expired?</p> <p>23 MS. McENROE: Objection to form.</p> <p>24 A. Again, depending upon how long beyond that,</p>

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<p>1 it's possible, yes.</p> <p>2 Q. Mathew Thomas took a validation exam in</p> <p>3 September 2011. Did ECFMG have any role in that exam?</p> <p>4 MS. McENROE: Objection to form.</p> <p>5 A. I believe not.</p> <p>6 Q. Do you know who granted permission to take</p> <p>7 that exam?</p> <p>8 A. I believe the national board.</p> <p>9 Q. So, in general, does ECFMG get involved in</p> <p>10 validation exams in any way?</p> <p>11 MS. McENROE: Objection to form.</p> <p>12 A. In general, no.</p> <p>13 Q. Is ECFMG notified of the results of a</p> <p>14 validation exam?</p> <p>15 MS. McENROE: Objection to form.</p> <p>16 A. In this particular case we were, yes.</p> <p>17 Q. Is there a reason why you would not have been</p> <p>18 for other cases?</p> <p>19 A. If it were not an international medical</p> <p>20 student or a graduate; if it were someone we were not</p> <p>21 associated with, we would not have been advised.</p> <p>22 Q. So, any international medical graduate who</p> <p>23 takes a validation exam, is ECFMG notified of the</p> <p>24 result?</p>	<p>1 pass was achieved. What does ECFMG do as their next</p> <p>2 step?</p> <p>3 MS. McENROE: Objection to the form.</p> <p>4 A. One of the things we would do is, ECFMG has</p> <p>5 its own exam history where we keep track of the exams</p> <p>6 used for ECFMG certification, so we would change</p> <p>7 that -- we would put that in as a valid score in the</p> <p>8 ECFMG record, so we would do that, yes.</p> <p>9 Q. Now, if they meet all the requirements for the</p> <p>10 ECFMG certificate, what would you do?</p> <p>11 MS. McENROE: Objection to form.</p> <p>12 A. If they were otherwise eligible, we would give</p> <p>13 them the ECFMG certificate.</p> <p>14 Q. If a person takes that validation exam and</p> <p>15 fails and you are notified by NBME of the failure to</p> <p>16 validate, what is ECFMG's next step?</p> <p>17 MS. McENROE: Objection to the form.</p> <p>18 A. We would go into our database and mark the</p> <p>19 exam records to show that that was an invalidated</p> <p>20 score.</p> <p>21 Q. Do they label it invalidated or something</p> <p>22 else?</p> <p>23 A. That I don't know.</p> <p>24 Q. Is the term "indeterminate"?</p>
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<p>1 MS. McENROE: Objection to form.</p> <p>2 A. But I believe generally we would be, yes.</p> <p>3 Q. And just to touch on that further: If you're</p> <p>4 notified that a student passes or fails, would you then</p> <p>5 allow them to apply for the exams?</p> <p>6 MS. McENROE: Objection to form.</p> <p>7 A. I'm not sure I follow the question.</p> <p>8 Q. Whether a student passes the validation exam</p> <p>9 or fails the validation exam, what is ECFMG's role after</p> <p>10 that?</p> <p>11 MS. McENROE: Objection to form.</p> <p>12 A. I still don't understand.</p> <p>13 Q. If a student passes a validation exam, what</p> <p>14 does ECFMG do once notified?</p> <p>15 MS. McENROE: Objection to form.</p> <p>16 A. I'm really not sure I follow what it is you're</p> <p>17 trying to get at.</p> <p>18 Q. A student takes the exam, found to be</p> <p>19 indeterminate. . .</p> <p>20 A. Right.</p> <p>21 Q. . . and agrees to take a validation exam.</p> <p>22 A. Okay.</p> <p>23 Q. They pass the validation exam. You stated</p> <p>24 before that NBME must notify -- notifies you that the</p>	<p>1 A. "Indeterminate" may be the term.</p> <p>2 Q. And at that point is a flag on the Oasis</p> <p>3 lifted, or does it remain on the account?</p> <p>4 MS. McENROE: Objection to form.</p> <p>5 A. It may or may not be, depending upon the</p> <p>6 particular case, so. . .</p> <p>7 Q. In the case of Mathew Thomas, you stated that</p> <p>8 the flag is still there. Could you explain why?</p> <p>9 MS. McENROE: Objection to form.</p> <p>10 A. This is kind of complicated, but I just want</p> <p>11 to let you know. The reason the flag stays in Dr.</p> <p>12 Thomas' record was, the Step 1 score from February</p> <p>13 14th, 2006 was not automatically voided on February</p> <p>14 14th, 2013 because he had a pending registration for</p> <p>15 the other exams that meet ECFMG-certification</p> <p>16 requirements; that is, Step 2 CK and Step 2 CS.</p> <p>17 So, our programming system kind of waits to</p> <p>18 make sure what the outcome of those exams are, okay?</p> <p>19 And if the individual then did not pass those</p> <p>20 examinations, to wait until then and then void the</p> <p>21 scores.</p> <p>22 And in your particular case, in Dr. Thomas'</p> <p>23 case, that took until fairly recently, I think, even</p> <p>24 with a Step 2 CS registration.</p>

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<p>1 Q. So, to clarify: Is there an open registration 2 currently for Mathew Thomas? 3 A. My recollection is there is not. 4 Q. If there is no open registration, should the 5 flag now have been lifted? 6 MS. McENROE: Objection to form. 7 A. Assuming there are no other issues, it can be, 8 yes. 9 Q. Was the flag placed because of expired exams 10 or because of the validation or the indeterminate score 11 from December 31st, 2007? 12 MS. McENROE: Objection to form. 13 A. The ECFMG flag was originally placed when we 14 were notified of the investigation, whenever that was. 15 Q. So, is there a way for ECFMG to separate the 16 open registrations and the exam for Step 2 CK because 17 that individual has to retake that exam, yes? 18 MS. McENROE: Objection to form. 19 A. Yes, I'm not sure I understand the question. 20 Q. You stated that the flag was placed because 21 the student went to Optima, took a validation 22 examination or was pending a validation exam, and once 23 that validation exam was completed the flag should have 24 been lifted so that he could apply and take the exam</p>	<p>1 That's a whole ECFMG process. 2 Q. Once those registration periods are completed, 3 what should happen to that flag? 4 MS. McENROE: Objection to form. 5 A. Again, it's possible that flag could be 6 lifted. 7 Q. In the case of Mathew Thomas, where the 8 validation exam is behind him, the open registration 9 process is behind him, should there be a flag on his 10 account right now? 11 MS. McENROE: Objection to form. 12 A. With respect to the voiding of the scores, no. 13 Q. So, currently there is a flag. Do you know 14 specifically why there is a flag? 15 A. Yes, I do. 16 Q. Could you please explain specifically why 17 there is a flag? 18 A. Because the voiding of the scores actually 19 took place yesterday. 20 Q. Was there a reason why it happened yesterday? 21 A. Yes. 22 Q. Please explain. 23 A. A technical reason: Because the last 24 registration, which is a Step 2 CS, the fact that you</p>
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<p>1 again. 2 MS. McENROE: Objection to form, 3 confusing, vague, misstates prior testimony. 4 DR. THOMAS: Okay, I'll start over. 5 BY DR. THOMAS: 6 Q. Why was a flag placed on Mathew Thomas' 7 accounts? 8 A. First of all, maybe it might be helpful to 9 clarify what a flag is. 10 Again, ECFMG uses a flag, which is kind of 11 like a notation on the electronic record, for a myriad 12 of different things, including, you know, an ongoing 13 investigation, something wrong with the data, we need 14 particular information, something that allows that any 15 kind of electronic process is not completed without a 16 particular staff member actually kind of signing off on 17 it. 18 So for example, in Dr. Thomas' case, a flag 19 may have initially been started due to a notification 20 that there was an ongoing investigation, but even after 21 that work was done and the indeterminate score is all 22 taken care of, we would keep the flag on it for our own 23 particular reasons, which in this particular case, as I 24 said, was because the void had not taken place yet.</p>	<p>1 didn't appear for the exam and so the registration had 2 been closed, had not been downloaded to our database, 3 and that just came to my attention recently, so I had 4 it done. 5 Q. Did Mathew Thomas set an exam date for Step 2 6 CS? 7 A. I don't recall. 8 Q. So, is it your understanding that the time 9 period ended yesterday, or it ended prior and you just 10 managed the situation yesterday? 11 MS. McENROE: Objection to form. 12 A. My recollection is the eligibility period 13 ended prior to yesterday, but we, in a sense, got 14 around to putting that information in our database just 15 yesterday or the day before. 16 (A brief recess was taken) 17 DR. THOMAS: We're back on the record. 18 BY DR. THOMAS: 19 Q. The committee that met regarding the request 20 for waiver from Mathew Thomas to ECFMG for the 21 seven-year rule, can that decision be appealed? 22 A. I think the individual can ask for 23 reconsideration. 24 Q. Who would that reconsideration go to?</p>

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<p>1 A. It would go to the same committee.</p> <p>2 Q. Is there any minimum requirement to be able to</p> <p>3 ask for reconsideration?</p> <p>4 A. Generally a petition for reconsideration</p> <p>5 requires new evidence that wasn't available to the</p> <p>6 appellant at the time and therefore not available to</p> <p>7 the committee.</p> <p>8 Q. Have you ever had a situation where a student</p> <p>9 asked for an extension of the seven-year rule based on</p> <p>10 a pending investigation or a pending validation case?</p> <p>11 MS. McENROE: Objection to form.</p> <p>12 A. I don't recall any such request.</p> <p>13 Q. Are you involved in any requests made</p> <p>14 regarding a seven-year rule extension, meaning are you</p> <p>15 involved in every case that comes through with a</p> <p>16 request to extend the seven-year rule?</p> <p>17 MS. McENROE: Objection to form.</p> <p>18 A. I think as I indicated before, one my</p> <p>19 functions at ECFMG is as staff to the ECFMG Medical</p> <p>20 Education Credentials Committee, and since such request</p> <p>21 would have to go to that committee, I would be</p> <p>22 involved, yes.</p> <p>23 Q. Your current role and title, how long have you</p> <p>24 been in that role?</p>	<p>1 A. The office of the USMLE secretariat.</p> <p>2 Q. At that time who was the secretariat?</p> <p>3 A. I believe it was Susan Deitsch who staffed the</p> <p>4 office.</p> <p>5 Q. She was a secretariat, or she was a member of</p> <p>6 the Office of the Secretariat?</p> <p>7 A. I don't know that there's actually a</p> <p>8 secretariat; that is, that is actually an individual I</p> <p>9 would see in the Office of the Secretariat.</p> <p>10 Q. Do you know who Janet Carson is?</p> <p>11 A. I know Janet Carson, yes.</p> <p>12 Q. Would you say that Susan Deitsch reported to</p> <p>13 Janet Carson, or they were both just members of the</p> <p>14 Office of the Secretariat?</p> <p>15 MS. McENROE: Objection to form.</p> <p>16 A. I do not know that Susan Deitsch reported to</p> <p>17 Janet Carson. I don't know that Janet Carson was in</p> <p>18 the secretariat's office.</p> <p>19 Q. Did you have conversations with Susan Deitsch</p> <p>20 regarding the Optima University case?</p> <p>21 A. Concerning the investigation, yes.</p> <p>22 Q. Was there anything specific that you were told</p> <p>23 regarding the Optima University case and how the</p> <p>24 students would be managed if they went there?</p>
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<p>1 A. As associate vice-president for operations?</p> <p>2 I'd say like maybe four years.</p> <p>3 Q. What was your position at the time that the</p> <p>4 Optima investigation started?</p> <p>5 A. My recollection is that it was director of</p> <p>6 credentials at record services.</p> <p>7 Q. In that role would you have been notified</p> <p>8 directly regarding the Optima University situation?</p> <p>9 MS. McENROE: Objection to form.</p> <p>10 A. Notified by. . .</p> <p>11 Q. Students or members above that notify you at</p> <p>12 ECFMG.</p> <p>13 A. I would have received notification, yes.</p> <p>14 Q. Were you ever told how to manage any inquiries</p> <p>15 regarding Optima University?</p> <p>16 MS. McENROE: Objection to form.</p> <p>17 A. Yes.</p> <p>18 Q. Could you please tell me what those</p> <p>19 instructions were?</p> <p>20 MS. McENROE: Objection to form.</p> <p>21 A. Depending upon the inquiry, but mostly it</p> <p>22 would be referred to the national board.</p> <p>23 Q. And who at the national board would you have</p> <p>24 referred those students to?</p>	<p>1 MS. McENROE: Objection to form.</p> <p>2 A. I don't recall a conversation with Susan</p> <p>3 Deitsch specifically about that, no.</p> <p>4 Q. Did you have conversations with anyone at the</p> <p>5 National Board of Medical Examiners regarding the case</p> <p>6 at Optima University and how students who went to</p> <p>7 Optima University would be managed?</p> <p>8 MS. McENROE: Objection to form;</p> <p>9 further, to the extent it calls for privileged</p> <p>10 information where counsel for either ECFMG or</p> <p>11 USMLE was involved in any way, I would instruct</p> <p>12 you not to answer.</p> <p>13 THE WITNESS: I'm not answering.</p> <p>14 DR. THOMAS: Can I just go off the</p> <p>15 record for a moment?</p> <p>16 (There was a discussion held off the</p> <p>17 record)</p> <p>18 DR. THOMAS: We're back on the record.</p> <p>19 BY DR. THOMAS:</p> <p>20 Q. Mr. Kelly, did you have any conversations with</p> <p>21 Susan Deitsch directly?</p> <p>22 MS. McENROE: Objection to form.</p> <p>23 A. Concerning. . .</p> <p>24 Q. Concerning the Optima University</p>

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<p>1 investigation.</p> <p>2 A. Yes, I did.</p> <p>3 Q. At any time did she speak to you regarding her</p> <p>4 thoughts about the students who went to Optima</p> <p>5 University?</p> <p>6 MS. McENROE: Objection to form;</p> <p>7 further, I'll reiterate my instruction: If it</p> <p>8 involves information on advice by counsel, I'll</p> <p>9 instruct you not to answer.</p> <p>10 THE WITNESS: I don't recall, so. . .</p> <p>11 DR. THOMAS: Okay.</p> <p>12 BY DR. THOMAS:</p> <p>13 Q. Was ECFMG ever given a list of all students</p> <p>14 who went to Optima University?</p> <p>15 MS. McENROE: Objection to form.</p> <p>16 A. We received information on some identified</p> <p>17 student, I think, yes; potential students, yes.</p> <p>18 Q. In your history at ECFMG and this case with</p> <p>19 Optima University, would you say that every student</p> <p>20 that went to Optima University was -- the names of</p> <p>21 every student who went to Optima University were given</p> <p>22 to you?</p> <p>23 MS. McENROE: Objection to form.</p> <p>24 A. I do not know.</p>	<p>1 Q. Does ECFMG send a member to the committee for</p> <p>2 score validation?</p> <p>3 A. As I said before, the USMLE is governed by the</p> <p>4 composite committee, and we have representation on</p> <p>5 the -- ECFMG has representation on the composite</p> <p>6 committee. The composite committee then, my</p> <p>7 understanding is, appoints the committee on score</p> <p>8 validity, the then-committee on score validity.</p> <p>9 Q. Did ECFMG send a representative to the</p> <p>10 committee on score validity in the case of Mathew</p> <p>11 Thomas?</p> <p>12 A. The way you're saying it, the answer would be</p> <p>13 no.</p> <p>14 Q. At the hearing where Mathew Thomas went before</p> <p>15 the committee for score validity, was any member from</p> <p>16 ECFMG present at that meeting?</p> <p>17 A. There were ECFMG staff members, yes, present</p> <p>18 at that meeting.</p> <p>19 Q. Could you please state who they were?</p> <p>20 A. My recollection is they were Dr. Whelan and</p> <p>21 Mr. Seeling.</p> <p>22 Q. Could you please state what their role is at</p> <p>23 ECFMG?</p> <p>24 A. Mr. Seeling at that time was the</p>
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<p>1 Q. Do you think there were more students that</p> <p>2 went to Optima University that you do not know of?</p> <p>3 MS. McENROE: Objection to form.</p> <p>4 A. And I really don't know. I couldn't answer</p> <p>5 that.</p> <p>6 Q. Every student whose name was given to you,</p> <p>7 where did you get those names from?</p> <p>8 MS. McENROE: Objection to form.</p> <p>9 A. We got them from the national board.</p> <p>10 Q. To your understanding, did every name that was</p> <p>11 given to you go before a validation committee, or were</p> <p>12 they told that their exam scores were indeterminate?</p> <p>13 MS. McENROE: Objection to form.</p> <p>14 A. Could you repeat the question? I'm not sure I</p> <p>15 follow the question.</p> <p>16 Q. A list was given to you from NBME, or each</p> <p>17 student they found was given to ECFMG. Did every</p> <p>18 student whose name came across to you, did every one of</p> <p>19 them have to prove the validity of their scores?</p> <p>20 MS. McENROE: Objection to form.</p> <p>21 A. And I have no direct knowledge of that.</p> <p>22 Q. Do you know how many students went before a</p> <p>23 committee for score validation?</p> <p>24 A. I do not know.</p>	<p>1 vice-president for operations and attended the meeting</p> <p>2 as a staff member. He was not a member of the</p> <p>3 committee. And at that time, frankly, I don't recall</p> <p>4 what Dr. Whelan's title was. I believe he was involved</p> <p>5 in our acculturation services.</p> <p>6 Q. Could you please explain what that is?</p> <p>7 A. One of ECFMG's missions obviously is to assist</p> <p>8 international medical graduates, so we have programs</p> <p>9 that tell medical graduates of the US healthcare</p> <p>10 system, how to write letters of recommendation, what</p> <p>11 the US healthcare system is like as compared to maybe</p> <p>12 some of the international systems.</p> <p>13 Q. Mr. Seeling, you said, is not a member of the</p> <p>14 committee.</p> <p>15 A. He was not a member of the committee.</p> <p>16 Q. Did he have any voting rights or the</p> <p>17 opportunity to speak on behalf of ECFMG during that</p> <p>18 committee?</p> <p>19 A. I was not at that committee meeting, but my</p> <p>20 understanding is that he would not have had voting</p> <p>21 rights.</p> <p>22 Q. Would he have the opportunity to form an</p> <p>23 opinion on behalf of ECFMG?</p> <p>24 MS. McENROE: Objection to form.</p>

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<p>1 A. I don't want to speak for him.</p> <p>2 Q. I didn't ask if he had an opinion. I'm asking</p> <p>3 if he had the opportunity to form an opinion on behalf</p> <p>4 of ECFMG.</p> <p>5 MS. McENROE: Objection to form.</p> <p>6 A. When you say "on behalf of ECFMG," I really</p> <p>7 can't answer that.</p> <p>8 Q. Does he have the authority to speak on behalf</p> <p>9 of ECFMG?</p> <p>10 MS. McENROE: Objection to form.</p> <p>11 A. I think he's permitted to speak, if that's</p> <p>12 your question.</p> <p>13 Q. I guess my question is, if he were to give his</p> <p>14 opinion at that committee, is that the same as ECFMG</p> <p>15 giving their opinion?</p> <p>16 MS. McENROE: Objection to form, calls</p> <p>17 for a legal conclusion.</p> <p>18 THE WITNESS: I can't answer that. I</p> <p>19 don't know.</p> <p>20 BY DR. THOMAS:</p> <p>21 Q. Dr. Whelan was the chair of the committee.</p> <p>22 Would he be speaking on behalf of ECFMG or as a chair</p> <p>23 in that committee?</p> <p>24 MS. McENROE: Objection to form.</p>	<p>1 Q. Does ECFMG decide who goes to the meetings, to</p> <p>2 the hearings?</p> <p>3 MS. McENROE: Objection to form.</p> <p>4 A. When you say "does ECFMG decide," I don't</p> <p>5 know. . .</p> <p>6 Q. Who determines what staff member can go to a</p> <p>7 hearing?</p> <p>8 MS. McENROE: Objection to form.</p> <p>9 A. It's generally in the staff member's job</p> <p>10 description what duties and roles they perform.</p> <p>11 Q. Is there a specified position within ECFMG</p> <p>12 that sends that representative each time there is a</p> <p>13 score-validity matter?</p> <p>14 A. And you're talking about the staff member?</p> <p>15 Q. The staff member.</p> <p>16 A. Generally that falls within the vice-president</p> <p>17 of operations' purview.</p> <p>18 Q. Is it general practice that ECFMG always send</p> <p>19 said staff member to every hearing?</p> <p>20 MS. McENROE: Objection to form.</p> <p>21 A. I believe the answer is yes.</p> <p>22 Q. Was ECFMG notified that Mathew Thomas had</p> <p>23 requested to reopen the case against him for the</p> <p>24 indeterminate score?</p>
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<p>1 A. He would be speaking as a member of the</p> <p>2 committee on score validity.</p> <p>3 Q. So, anything he said, would it be on behalf of</p> <p>4 ECFMG?</p> <p>5 MS. McENROE: Objection to form, calls</p> <p>6 for a legal conclusion.</p> <p>7 Q. To your understanding.</p> <p>8 MS. McENROE: You may answer.</p> <p>9 A. Again, what it is is, when ECFMG either</p> <p>10 nominates or appoints individuals on behalf of the</p> <p>11 ECFMG to the composite committee, then their interests</p> <p>12 are then with the composite committee. They're not</p> <p>13 ECFMG representatives or spokespersons. They're</p> <p>14 composite commit and USMLE people.</p> <p>15 So, to the extent that that's what Dr. Whelan</p> <p>16 was, he was there on behalf of the composite committee</p> <p>17 and this score validity committee, not ECFMG.</p> <p>18 Q. Is it standard practice to have ECFMG staff</p> <p>19 members that are not members of the committee present</p> <p>20 at these type of hearings?</p> <p>21 MS. McENROE: Objection to form.</p> <p>22 A. I believe that ECFMG staff members, in</p> <p>23 addition to national board staff members and other</p> <p>24 staff members, do attend, yes.</p>	<p>1 MS. McENROE: Objection to form.</p> <p>2 A. I don't recall.</p> <p>3 MS. McENROE: Let's take a quick break.</p> <p>4 DR. THOMAS: All right.</p> <p>5 (A brief recess was taken)</p> <p>6 MS. McENROE: Dr. Thomas, if you have</p> <p>7 nothing further, I believe we're done for the day.</p> <p>8 DR. THOMAS: Yes, thank you.</p> <p>9 THE WITNESS: Thank you.</p> <p>10 DR. THOMAS: Thank you, Mr. Kelly.</p> <p>11 (The deposition was concluded at 11:30</p> <p>12 a.m.)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>

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<p style="text-align: right;">Page 58</p> <p>1 CERTIFICATION</p> <p>2</p> <p>3 -----</p> <p>4</p> <p>5 I hereby certify that the testimony and</p> <p>6 the proceedings in the foregoing matter are contained</p> <p>7 fully and accurately in the stenographic notes taken by</p> <p>8 me and that the copy is a true and correct transcript</p> <p>9 of the same.</p> <p>10</p> <p>11</p> <p>12 _____</p> <p>13 Lance A. Brusilow</p> <p>14 Registered Professional Reporter</p> <p>15 Certified Realtime Reporter</p> <p>16</p> <p>17 The foregoing certification does not</p> <p>18 apply to any reproduction of the same by any means</p> <p>19 unless under the direct control and/or supervision of</p> <p>20 the certifying shorthand reporter.</p> <p>21 -----</p> <p>22</p> <p>23</p> <p>24</p>	

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